

VIA E-MAIL

RECEIVED

NOV 14 2017

NEW MOTOR VEHICLE BOARD

LAW OFFICES OF GAVIN M. HUGHES
GAVIN M. HUGHES State Bar #242119
ROBERT A. MAYVILLE, JR. State Bar #311069
3436 American River Drive, Suite 10
Sacramento, CA 95864
Telephone: (916) 900-8022
E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PROTESTANT

FILED

NEW MOTOR VEHICLE BOARD

DATE 11-14-17

BY NT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

ARBM, INC., DBA LAND ROVER
LIVERMORE,

Protestant,

v.

JAGUAR LAND ROVER NORTH AMERICA,
LLC,

Respondent.

PROTEST NO: PR-2543-17

PROTEST

[Vehicle Code Section 3065.1]

Protestant, ARBM, INC., DBA LAND ROVER LIVERMORE, a California corporation, qualified to do business in California, through its attorneys, files this protest under provisions of California Vehicle Code Section 3065.1 and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Land Rover vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at, 3500 Las Positas Road, Livermore, California 94551; Protestant's telephone number is (888) 355-1743.

2. Respondent, Jaguar Land Rover North America, LLC, distributes Land Rover products and is the franchisor of Protestant.

1 3. Protestant is represented in this matter by Law Offices of Gavin M. Hughes, whose
2 address and telephone number are 3436 American River Drive, Suite 10, Sacramento, California 95864;
3 (916) 900-8022.

4 4. Respondent operates an incentive program entitled Business Builder Bonus Program
5 ("BBBP"). The BBBP incentive funds available to Land Rover dealers represent 7% of invoice for all
6 vehicles retailed. Respondent modified the BBBP program performance categories over time. Under
7 the current iteration of the BBBP program, Respondent measures Protestant's eligibility for receiving
8 BBBP incentive monies based upon its performance, as measured by Respondent, under six (6)
9 categories: 1.) Facility Reserve; 2.) Approved; 3.) Training; 4) In Territory Sales; 5.) Sales Objectives;
10 and 6.) Customer Pay Hours Sold. Each category counts as 1% toward the total available 7% of invoice,
11 with the exception of Facility Reserve, which accounts for 2%.

12 5. Respondent pays dealers the amount of BBBP incentive funds it determines each dealer
13 is entitled, on a quarterly basis. Dealers qualifying for the full amount of BBBP funds enjoy a
14 competitive advantage over those dealers that do not receive the full amount.

15 6. Respondent has unlawfully withheld incentives owed Protestant in an amount exceeding
16 several hundred thousand dollars.

17 7. Respondent's refusal to pay Protestant the full 7% of BBBP funds is based, in part, upon
18 a deliberately discriminatory sales performance standard, which unreasonably discriminates against
19 Protestant. Moreover, several of the other performance categories of the BBBP program are based upon
20 an overly-broad assigned dealer territory designed to overstate Protestant's facility requirements, sales
21 objectives, and customer pay objectives.

22 8. Protestant and its attorneys desire to appear before the Board and/or its designated hearing
23 officer for the purpose of presenting oral and documentary evidence concerning the matters herein
24 alleged. Protestant estimates the hearing in this matter will take ten (10) days to complete.

25
26 WHEREFORE, Protestant prays as follows:

27 1. That the Board sustain this protest and order Respondent to desist from further
28 withholding of BBBP funds until the Board resolves this matter, nor thereafter upon resolution.

1 2. That the Board order Respondent to pay Protestant all BBBP incentive monies
2 determined to have been improperly withheld pursuant to Vehicle Code Section 3065.1.

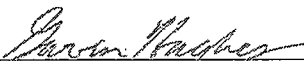
3 3. That pending the hearing in this matter, the Board or its executive director or authorized
4 representative immediately order Respondent to cease withholding any BBBP sales incentives funds until
5 such time as Respondent has obtained approval from the Board pursuant to Vehicle Code Sections 3065.1,
6 and 3066.

7 4. That a pre-hearing conference be set and the parties notified thereof.

8 5. That Protestant be awarded such other and further relief as the Board deems just and proper.
9
10

11 Dated: November 14, 2017

LAW OFFICES OF
GAVIN M. HUGHES

12
13
14 By 
15 Gavin M. Hughes
16 Attorneys for Protestant
17
18
19
20
21
22
23
24
25
26
27
28

1 DECLARATION OF SERVICE BY ELECTRONIC MAIL

2 I, Robert A. Mayville, Jr., declare that I am employed in the County of Sacramento, State of
3 California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein.
4 My business address is 3436 American River Drive, Suite 10, Sacramento, California 95864.
5

6 I declare that on November 14, 2017, I caused to be served a true and complete copy of:

7 *PROTEST [Vehicle Code Section 3060(b)(1)]*
8 *Jaguar Franchise*

9 *ARBM, Inc., dba Jaguar Livermore*
10 *v.*
11 *Jaguar Land Rover North America, LLC*

12 *PROTEST [Vehicle Code Section 3065.1]*
13 *Jaguar Franchise*

14 *ARBM, Inc., dba Jaguar Livermore*
15 *v.*
16 *Jaguar Land Rover North America, LLC*

17 *PROTEST [Vehicle Code Section 3060(b)(1)]*
18 *Land Rover Franchise*

19 *ARBM, Inc., dba Land Rover Livermore*
20 *v.*
21 *Jaguar Land Rover North America, LLC*

22 *PROTEST [Vehicle Code Section 3065.1]*
23 *Land Rover Franchise*

24 *ARBM, Inc., dba Land Rover Livermore*
25 *v.*
26 *Jaguar Land Rover North America, LLC*

27 ///

28 ///

1 By Electronic Mail:

2 Colm A. Moran, Esq.

3 Email: colm.moran@hoganlovells.com

4 Attorney for Jaguar Land Rover North America, LLC

5 HOGAN LOVELLS US LLP

6 1999 Avenue of the Stars

7 Suite 1400

8 Los Angeles, CA 90067

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed this 14 November, 2017, Sacramento, California.

11 
Robert A. Mayville, Jr.